Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

19 September 2019*

(Dumping — Imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in China and Taiwan — Imposition of definitive anti-dumping duties — Normal value — Adjustments — Manifest error of assessment — Obligation to state reasons)

In Case T-228/17,

Zhejiang Jndia Pipeline Industry Co. Ltd, established in Wenzhou (China), represented by S. Hirsbrunner, lawyer,

applicant,

v

European Commission, represented by T. Maxian Rusche, N. Kuplewatzky and E. Schmidt, acting as Agents,

defendant,

supported by

Council of the European Union, represented by B. Driessen and H. Marcos Fraile, acting as Agents,

intervener,

APPLICATION under Article 263 TFEU for annulment of Commission Implementing Regulation (EU) 2017/141 of 26 January 2017 imposing definitive anti-dumping duties on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan (OJ 2017 L 22, p. 14),

THE GENERAL COURT (Fourth Chamber),

composed of H. Kanninen, President, L. Calvo-Sotelo Ibáñez-Martín (Rapporteur) and I. Reine, Judges,

Registrar: F. Oller, Administrator,

having regard to the written part of the procedure and further to the hearing on 22 January 2019,

gives the following

* Language of the case: English.

Judgment

I. Background to the dispute

1 The applicant, Zhejiang Jndia Pipeline Industry Co. Ltd, is a company established in China that produces and exports to the European Union stainless steel tube and pipe butt-welding fittings ('tube and pipe fittings').

2 Following a complaint lodged on 14 September 2015 by the Defence Committee of the Stainless Steel Butt-welding Fittings Industry of the European Union, on 29 October 2015 the European Commission published a notice of initiation of an anti-dumping proceeding concerning imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan (OJ 2015 C 357, p. 5), in accordance with Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51, and corrigendum OJ 2010 L 7, p. 22) (replaced by Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21)). It must be borne in mind that, according to settled case-law, procedural rules are generally held to apply on the date on which they enter into force (see judgment of 11 December 2012, *Commission* v *Spain*, C-610/10, EU:C:2012:781, paragraph 45 and the case-law cited). By contrast, the substantive rules must be interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, their objectives or their general scheme that such effect must be given to them (judgments of 12 November 1981, *Meridionale Industria Salumi and Others*, 212/80 to 217/80, EU:C:1981:270, paragraph 9, and of 11 December 2008, *Commission* v *Freistaat Sachsen*, C-334/07 P, EU:C:2008:709, paragraph 44). Accordingly, reference will be made below, for the substantive rules, to Regulation No 1225/2009 and, for the procedural rules, to Regulation No 1225/2009 or Regulation 2016/1036 depending on the date on which the procedure in question was completed.

3 The investigation of dumping and injury covered the period from 1 October 2014 to 30 September 2015 ('the investigation period'). The examination of trends relevant for the injury analysis covered the period from 1 January 2012 to 30 September 2015 ('the period considered').

4 The China Chamber of Commerce of Metals, Minerals and Chemical Importers & Exporters ('the CCCMC') represented certain Chinese producers of tube and pipe fittings in the procedure before the Commission.

5 A verification was carried out at the applicant's premises in accordance with Article 16 of Regulation No 1225/2009 (replaced by Article 16 of Regulation 2016/1036).

6 The applicant did not submit a claim for market economy treatment under Article 2(7)(b) of Regulation No 1225/2009 (replaced by Article 2(7)(b) of Regulation 2016/1036).

7 On 25 July 2016 the CCCMC submitted comments on the provisional disclosure. It requested the Commission to disclose all of the information which it had at its disposal concerning the Union industry at the time of the provisional disclosure.

8 On 27 October 2016 the Commission issued its final disclosure, setting 16 November 2016 as the time limit for submitting comments. In that disclosure, the Commission notified its decision to use Taiwan as an analogue country for the purpose of establishing normal value in relation to exporting producers in the People's Republic of China.

9 On 16 November 2016 the CCCMC and the applicant submitted comments on the final disclosure. The applicant claimed that the prescribed time limit for submitting its comments was inadequate in view of the significance of some of the data released for the first time in the final disclosure. The CCCMC requested a hearing before the Commission. The Commission proposed a date for holding the hearing which the CCCMC considered to be too close in the light of the necessary formalities for the persons concerned to arrive in Brussels (Belgium), with the result that the hearing did not take place.

10 On 25 November 2016, following comments from a number of parties to the procedure, the Commission issued its revised final disclosure, containing additional data and information and setting 29 November 2016 as the time limit for submitting comments. The CCCMC requested an extension of that time limit. That request having been refused, the CCCMC submitted comments within the prescribed time limit.

11 On 26 January 2017 the Commission adopted Implementing Regulation (EU) 2017/141 imposing definitive anti-dumping duties on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan (OJ 2017 L 22, p. 14, 'the contested regulation').

12 Under Article 1 of the contested regulation, the rate of the anti-dumping duty established for the applicant is 48.9%.

II. Procedure and forms of order sought

13 By application lodged at the Court Registry on 19 April 2017, the applicant brought the present action.

14 In the light of the applications made by the applicant on 27 April and 13 October 2017, on the basis of Article 66 of the Rules of Procedure of the General Court, the names of certain producers that cooperated in the procedure before the Commission at issue and reference to an item of evidence submitted by the applicant have been omitted in the present judgment.

15 By document lodged at the Court Registry on 21 June 2017, the Council of the European Union applied for leave to intervene in these proceedings in support of the form of order sought by the Commission, in relation to solely the applicant's fifth plea in law.

16 By decision of 27 July 2017, the Court granted the Council leave to intervene.

17 On a proposal from the Judge-Rapporteur, the General Court (Fourth Chamber) decided, on 6 November 2018, to open the oral part of the procedure and, by way of measure of organisation of procedure under Article 89 of the Rules of Procedure, to invite the applicant to provide evidence that it was represented by the CCCMC before the Commission. The applicant complied with the Court's request within the prescribed time limit.

18 Responding to the arguments and evidence submitted by the applicant in response to the measure of organisation of procedure referred to in paragraph 17 above, the Commission submitted, at the hearing, evidence to show that the applicant was not represented by the CCCMC before the Commission.

19 The applicant claims that the Court should:

– annul the contested regulation in so far as it concerns the applicant;

– order the Commission and the Council to pay the costs.

20 The Commission contends that the Court should:

– dismiss the action as inadmissible;

– in the alternative, dismiss the action as unfounded;

– order the applicant to pay the costs.

21 The Council contends that the Court should:

– dismiss the action as unfounded;

– order the applicant to pay the costs.

III. Law

22 In response to a question put by the Court at the hearing, the Commission declared that it was withdrawing its head of claim seeking to have the action declared inadmissible, a point which should be noted.

23 The applicant puts forward five pleas in law in support of its action. The first plea alleges that the Commission, in determining interchangeability, made a manifest error of assessment, failed to assess evidence impartially, imposed an excessive burden of proof on the applicant, infringed the applicant's right to be heard and failed to provide an adequate statement of reasons. The second plea alleges a manifest error of assessment and failure to provide an adequate statement of reasons in relation to the adjustment of the normal value. The third plea alleges a manifest error of assessment and abuse of discretion in determining the period considered. The fourth plea alleges breach of the principles of sound administration and transparency and infringement of rights of defence. The fifth plea alleges a manifest error of assessment in applying non-market economy treatment. In the interests of coherency, the Court will examine the fifth plea before the second plea. The issue of the lawfulness of the Commission's use of the non-market economy country method of calculating normal value must be dealt with before the issue covered by the second plea, relating to the Commission's refusal to use data from the Chinese market to calculate that normal value.

A. Substance

1. First plea, alleging a manifest error of assessment, failure to assess evidence impartially, imposition of an excessive burden of proof on the applicant, infringement of the applicant's right to be heard and failure to provide an adequate statement of reasons in determining that tube and pipe fittings produced in accordance with the ASME/ANSI and EN/DIN standards are interchangeable

24 In the context of the present plea, it is appropriate to examine first the second complaint, alleging infringement of the applicant's right to be heard, then, jointly, the first, third and fourth complaints, alleging a manifest error of assessment, failure to assess evidence impartially and imposition of an excessive burden of proof on the applicant and, lastly, the fifth complaint, alleging failure to provide an adequate statement of reasons.

(a) Subject matter of the first plea

25 It is apparent from recital 47 of the contested regulation that the investigation at issue concerned 'tube and pipe butt-welding fittings, of austenitic stainless steel grades, corresponding to AISI types 304, 304L, 316, 316L, 316Ti, 321 and 321H and their equivalent in the other norms, with a greatest external diameter not exceeding 406.4 mm and a wall thickness of 16 mm or less, with a roughness not less than 0.8 micrometres, not flanged, whether or not finished, originating in [China] and Taiwan' and that 'the product falls under CN codes ex 7307 23 10 and ex 7307 23 90'. It can be seen from recital 48 of the contested regulation that 'the product concerned is manufactured essentially by cutting and forming tubes and pipes', that it 'is used to join pipes and tubes of stainless steel' and that it '[exists] in different shapes', namely 'elbows, reducers, tees and caps'.

26 The applicant's arguments under the first plea may be divided into five complaints. The first complaint concerns the manifest error made by the Commission in concluding that tube and pipe fittings produced in accordance with the ASME/ANSI standard are interchangeable with those produced in accordance with the EN/DIN standard. The second complaint concerns the Commission's alleged infringement of the applicant's rights of defence as regards the comments it wished to submit during the anti-dumping proceeding concerning the issue of whether tube and pipe fittings produced in accordance with the two abovementioned standards are interchangeable. The third complaint concerns the Commission's alleged lack of impartiality in its assessment of the evidence that tube and pipe fittings produced in accordance with the two abovementioned standards are interchangeable. The fourth complaint concerns the excessive burden of proof imposed on the applicant by the Commission in respect of interchangeability. The fifth complaint concerns the Commission's alleged failure to provide an adequate statement of reasons in determining that interchangeability.

27 In the reply, the applicant stated, in response to the arguments set out in the defence, that its first plea did not seek to dispute the definition of the product concerned in recitals 47 and 48 of the contested regulation. It indicates that its first plea relates to the validity of the Commission's analysis of the effects of products dumped in the European Union for the purposes of determining injury and causation. The applicant submits that its complaints regarding a manifest error of assessment, failure to examine evidence impartially, infringement of the applicant's right to be heard and failure to provide an adequate statement of reasons in determining interchangeability bear on the validity of the Commission's assessment of the effects of dumped imports in relation to Union industry production for the purposes of establishing injury and causation. It maintains that Union producers produce almost exclusively EN/DIN-standard tube and pipe fittings and that Chinese producers produce almost exclusively ASME/ANSI-standard tube and pipe fittings. Therefore, since imports of tube and pipe fittings from China meeting the ASME/ANSI standard are not substantially interchangeable with products meeting the EN/DIN standard predominantly made by Union producers, the Commission could not reach an objective and reasoned conclusion that the imports are causing material injury to the Union industry.

28 At the hearing, in response to a question put by the Court, the Commission contended that the applicant's argument set out in paragraph 27 above had to be regarded as a new plea, since, in its reasoning in the first plea of the application, the applicant had not called the Commission's injury assessment into question.

29 In that regard, it must be noted that the applicant's argument referred to in paragraph 27 above constitutes a development of the arguments set out in the application in response to the Commission's arguments in the defence relating to the constraints placed upon it when defining the product concerned. In the application, the applicant takes issue with the Commission's assessment that the two EN/DIN and ASME/ANSI standards are interchangeable. In the reply, the applicant stated that that line of argument was intended to call into question the Commission's injury assessment. That development cannot therefore be regarded as a new plea.

(b) Second complaint, alleging infringement of the applicant's right to be heard in determining that the two types of standards are interchangeable

30 In its second complaint, the applicant submits that the Commission infringed its rights of defence in so far as it took note of the CCCMC's comments on non-interchangeability only when additional information was disclosed on 25 November 2016, but not in the earlier stages of the procedure. The applicant adds that the Commission set a period of 2.5 working days for the submission of comments on the revised final disclosure, and that this short period prevented it from commenting thoroughly on the additional information. The applicant claims that, although under Article 20(5) of the Regulation 2016/1036 a period shorter than 10 days can be set in which to make representations, the Commission should have set a longer period. In addition, the applicant submits that the complainant's hearing was held 1 day after the time limit set by the Commission for submissions on the revised final disclosure of 25 November 2016. The applicant claims in that regard that the CCCMC requested an extension of the time limit for responding to the revised final disclosure and that the Commission refused. The applicant considers that it was subject to discriminatory treatment in that regard since it was represented by the CCCMC in the procedure before the Commission.

31 The Commission emphasises that it was the CCCMC that acted before it during the procedure at issue, not the applicant itself. Accordingly, the Commission considers that the applicant cannot rely on an infringement of its rights of defence. In that regard, the Commission recalls that, in accordance with the Court's settled case-law, infringement of an individual right may be relied on only by the person whose right has allegedly been infringed, but not by third parties (judgments of 1 July 2010, *ThyssenKrupp Acciai Speciali Terni* v *Commission*, T-62/08, EU:T:2010:268, paragraph 186; of 26 October 2010, *CNOP and CCG* v *Commission*, T-23/09, EU:T:2010:452, paragraph 45, and of 12 May 2011, *Région Nord-Pas-de-Calais and Communauté d'agglomération du Douaisis* v *Commission*, T-267/08 and T-279/08, EU:T:2011:209, paragraph 77).

32 In response to the question put by the Court by way of measure of organisation of procedure referred to in paragraph 17 above, the applicant submitted arguments and evidence to show that it was represented by the CCCMC before the Commission.

33 First, the applicant emphasises that the CCCMC stated, in its preliminary comments submitted to the Commission, that it represented certain exporting producers of the product concerned. Secondly, the applicant argues that the CCCMC submitted to the Commission confidential information concerning the applicant which the CCCMC could not have obtained without the applicant's consent. Thirdly, the applicant submitted to the Court a statement sent on 28 October 2015 by the CCCMC to all the undertakings affected by the initiation of an anti-dumping proceeding concerning stainless steel tubes and pipes originating in China. While the addressees of the statement are not established, it is apparent from that statement that the CCCMC informed 'all the undertakings affected' by the initiation of an anti-dumping proceeding on account of the fact that three undertakings, including the applicant, had expressed their willingness to participate in the anti-dumping proceeding by designating a law firm to represent them before the Commission. It is also apparent from that statement that the representation agreement was to be concluded separately between each undertaking and the law firm.

34 In that regard, in the first place, it must be pointed out that, in its preliminary comments, the CCCMC did not specify which undertakings it represented. In the second place, it should be noted that the applicant has not specified which confidential information concerning it was submitted by the CCCMC. In the third place, it must be borne in mind that the CCCMC's statement of 28 October 2015 does not state that the CCCMC had decided itself to represent certain undertakings before the Commission, but that three undertakings had decided to participate in the anti-dumping proceeding and to be represented before the Commission by a certain law firm. It does not therefore follow from that statement that the CCCMC would act on behalf of the three undertakings in the procedure before the Commission. Accordingly, that document is not capable of proving that the CCCMC represented the applicant during the procedure at issue.

35 Moreover, it must be pointed out that, as stated in paragraph 18 above, in response to the arguments and documents submitted by the applicant, the Commission submitted, at the hearing, arguments and documents to prove that the applicant was not represented by the CCCMC before the Commission. First, the Commission submitted an extract from the anti-dumping questionnaire which it had sent to the applicant in which the applicant was asked if it was a member of the CCCMC. The applicant replied that it was a member of the Wenzhou Pipe Fittings Association. The Commission contends that it is clear from that reply that the applicant is not a member of the CCCMC. Secondly, the Commission submitted the power of attorney granted to a lawyer by the CCCMC to represent it before the Commission. The Commission submits that that power of attorney refers only to the CCCMC and cannot be regarded as evidence of the applicant's representation.

36 It follows from the foregoing that, as the Commission argues, the applicant has not proved that the CCCMC acted on its behalf before the Commission during the procedure at issue in the present case. Thus, the applicant cannot rely before the Court on the CCCMC's rights of defence (see, to that effect, judgments of 1 July 2010, *ThyssenKrupp Acciai Speciali Terni* v *Commission*, T-62/08, EU:T:2010:268, paragraph 186; of 26 October 2010, *CNOP and CCG* v *Commission*, T-23/09, EU:T:2010:452, paragraph 45, and of 12 May 2011, *Région Nord-Pas-de-Calais and Communauté d'agglomération du Douaisis* v *Commission*, T-267/08 and T-279/08, EU:T:2011:209, paragraph 77).

37 The applicant is, however, entitled to rely on its right to be heard in respect of its own participation in the administrative procedure. It takes issue, in essence, with the Commission for setting out its findings that the two types of standards are interchangeable only at the stage of the revised final disclosure and for giving the applicant only two and a half working days to set out its comments.

38 In that regard, it must be noted that the applicant neither submitted comments on the revised final disclosure nor requested an extension of the time limit for submitting those comments. The comments and the request for extension relied on by the applicant before the Court are both attributable to the CCCMC, in respect of which it has not been proved that it acted on the applicant's behalf, as follows from paragraph 36 above.

39 Furthermore, it must be noted that the time limit set by the Commission for submitting comments was set under Regulation 2016/1036, which was in force on the date of the revised final disclosure on 25 November 2016. Article 20(5) of that regulation provides that, for the purposes of submitting comments, 'a [period shorter than 10 days] may be set whenever an additional final disclosure has to be made'. By offering the applicant the possibility of submitting its comments until 29 November 2016, the Commission did not infringe the provisions governing the arrangements under which the parties are to be heard in respect of revised final disclosures.

40 Lastly, the applicant has not submitted evidence showing that it was not in a position effectively to express its point of view on the new information contained in the revised final disclosure.

41 In the light of the foregoing, it must be held that the applicant's right to be heard was not infringed.

42 The applicant's second complaint must therefore be rejected as both inadmissible and unfounded.

(c) First, third and fourth complaints, alleging manifest error, failure to examine evidence impartially and imposition of an excessive burden of proof on the applicant in determining that tube and pipe fittings produced in accordance with the ASME/ANSI and EN/DIN standards are interchangeable

(1) Admissibility of certain annexes to the reply

43 The applicant attached a number of annexes to the reply in support of its argument that tube and pipe fittings produced in accordance with the ASME/ANSI and EN/DIN standards were subject to different heat treatments, which justifies its view that fittings produced in accordance with those standards are not interchangeable.

44 In the reply, then in response to a question put by the Court at the hearing, the applicant stated that it submitted those annexes at the reply stage in order to address certain arguments put forward by the Commission in its response.

45 In that regard, it must be recalled that evidence in rebuttal and the amplification of previous evidence, submitted in response to evidence in rebuttal put forward by the opposing party are not covered by the time-bar rule in Article 85(1) of the Rules of Procedure (judgment of 13 December 2018, *Post Bank Iran* v *Council*, T-559/15, EU:T:2018:948, paragraph 75).

46 In the present case, it must be stated, first of all, that the applicant addressed in the application the issue of the heat treatment of various tube and pipe fittings depending on whether they were produced in accordance with the ASME/ANSI standard or in accordance with the EN/DIN standard. Next, it must be noted that the Commission did not provide in the defence any evidence in rebuttal in respect of that issue. Furthermore, by the line of argument put forward in its defence, the Commission does not dispute that the ASME/ANSI and EN/DIN standards result in differences in terms of heat treatment, but seeks, in essence, to downplay the practical importance of that issue.

47 In the light of the foregoing, it must be held that Annexes C.3, C.4 and C.5 attached to the reply are simply intended to support an argument already put forward by the applicant in the application and that they do not seek to invalidate the evidence in rebuttal that was submitted by the Commission at the defence stage, or even any arguments in rebuttal put forward in the defence. Moreover, the Court notes that the applicant did not specify, either in its written submissions or at the hearing, which arguments of the Commission the attached annexes were intended to address.

48 Since the applicant has not put forward other reasons for the submission of Annexes C.3, C.4 and C.5 at the reply stage, it follows that their submission must be considered to be out of time and unfounded, with the result that they must be declared inadmissible.

(2) Admissibility of the applicant's arguments concerning recital 54 of the contested regulation

49 Under the first plea, the applicant takes issue with recital 54 to the contested regulation, according to which 'the investigation and a hearing with the Union producer that also has an outward processing arrangement have shown that the physical, technical and chemical characteristics of products approved under the EN/DIN and under the ASME/ANSI standards [were] comparable'. In that regard, it emphasises that the statements of the EU producer referred to in that paragraph did not address the interchangeability of the two standards and that the producer in question ceased cooperating as of 27 January 2017, meaning that the information it provided was not verified. However, the applicant states that the information given by the EU producer which claimed that there was no interchangeability was checked through on-the-spot verification.

50 In that regard, the Commission contends that the applicant's arguments in respect of the importer which declared that there was no interchangeability are 'inadmissible', since they were not included by the applicant in the application, but only in the annexes.

51 The Commission observes that it is clear from the Court's case-law that the applicant cannot refer to annexes exclusively to put forward arguments before the Court, but that those arguments must be reproduced in the body of the application (judgment of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraphs 40 and 41, and order of 14 April 2016, *Best-Lock (Europe)* v *EUIPO*, C-452/15 P, not published, EU:C:2016:270, paragraph 14). The fact remains that, in accordance with case-law, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential arguments in law which, in accordance with the provisions of Article 76 of the Rules of Procedure, must appear in the application (see order of 14 April 2016, *Best-Lock (Europe)* v *EUIPO*, C-452/15 P, not published, EU:C:2016:270, paragraph 14 and the case-law cited). However, in the present case, it must be stated that the applicant's essential arguments referring to the statements made by the European importer which declared that the two standards were not interchangeable are set out in paragraph 37 of the application. Those arguments must therefore be declared admissible.

(3) Substance of the first, third and fourth complaints

52 Under its first complaint, the applicant claims that the Commission made a manifest error in finding that tube and pipe fittings produced in accordance with the ASME/ANSI standard and those produced in accordance with the EN/DIN standard were interchangeable on the EU market. The Commission failed properly to take account of all the relevant circumstances and appraise the facts of the matter with all due care.

53 The Commission disputes the applicant's arguments.

54 In that regard, it must be stated that the applicant's first complaint has no factual basis. It is apparent from recital 52 of the contested regulation that some parties claimed before the Commission, following the final disclosure, that tube and pipe fittings produced in accordance with the ASME/ANSI standard and those produced in accordance with the EN/DIN standard were not interchangeable from a technical point of view or that the fittings produced in accordance with the EN/DIN standard should be excluded from the definition of the product concerned. Following those comments, the Commission found, in recitals 53 to 58 of the contested regulation, that both the Union industry and the Chinese producers produce fittings in accordance with both types of standards, that the physical, technical and chemical characteristics of the fittings produced in accordance with both standards were comparable, although there may be slight differences and, lastly, that both types of standards were in competition with each other when the standard was chosen and even after the standard had been chosen, where they completely overlapped.

55 On the other hand, it is in no way apparent from the contested regulation that the Commission concluded that tube and pipe fittings produced in accordance with the two standards were interchangeable. The Commission confined itself to finding that there were frequently substantial similarities between fittings produced in accordance with the two standards and that they were in competition, which would not justify the exclusion of one of those types of standards from the definition of the product concerned.

56 It follows that the first complaint put forward by the applicant in the first plea must be rejected.

57 For the sake of completeness, in so far as the applicant's first complaint should be interpreted as referring not to interchangeability in the strict sense, but to the Commission's finding that tube and pipe fittings produced in accordance with the two standards are similar or comparable and are in competition, the Court makes the following observations.

58 First, the applicant submits that Union producers supply almost exclusively EN/DIN-standard tube and pipe fittings and that Chinese producers supply almost exclusively ASME/ANSI-standard tube and pipe fittings.

59 Secondly, the applicant states that an independent importer that cooperated in the anti-dumping investigation before the Commission submitted comments to the Commission claiming that the ASME/ANSI and EN/DIN standards are not interchangeable. It submits that that importer seems to have supported its statements by producing copies of orders of tube and pipe fittings which it had supplied to one of the Union complainants. The applicant submitted those comments to the Court as evidence.

60 Thirdly, the applicant takes issue with recital 55 of the contested regulation, according to which the two standards are in competition. It submits that that finding is contradicted by evidence that was submitted to the Commission and verified. With regard to the statement in recital 55 that 'it is true that for certain projects, the specifications will require the use of EN/DIN or ASME/ANSI[-standard products]', the applicant submits that, if the standards were interchangeable, no distinction would be drawn between projects. The applicant also takes issue with recital 54 of the contested regulation, claiming that the statements by the Union producer to which that recital refers did not address the interchangeability of the two standards and that the producer in question ceased cooperating as of 27 January 2017, meaning that the information it provided was not verified. However, the applicant states that the information given by the EU producer which claimed that there was no interchangeability was checked through on-the-spot verification.

61 Fourthly, as regards recital 57 of the contested regulation, according to which, 'despite specific requests made to the cooperating importer, the Commission did not receive any evidence demonstrating that the like product and the product concerned are not in competition', the applicant claims that the only cooperating importer submitted evidence and written observations to prove that there was no competition. The applicant claims that it is apparent from recital 39 of the contested regulation that the importer cooperated and submitted further evidence on interchangeability.

62 Fifthly, as regards recital 59 of the contested regulation, according to which, 'following additional disclosure several interested parties, including an unrelated importer, confirmed the above findings of the investigation' and that 'these interested parties reiterated that ASME/ANSI and EN/DIN [standards] to a large [extent were] interchangeable', furthermore, 'one interested party stated that Union pipe and tube suppliers [delivered] double certified products and any manufacturer of the product concerned [could] also acquire double certification' and 'this interested party further stated that, in fact, the majority of the traders' stocks of the product concerned and the like product is double certified', the applicant argues that all those statements are contradicted by evidence. It submits that the only independent importer that submitted comments to the Commission confirmed that there was no interchangeability.

63 Sixthly, with regard to recital 40 of the contested regulation, the applicant claims that 'reliable sources and experts' have denied the existence of double certification according to the two standards in question. One reason for non-double certification is that ASME/ANSI standard tube and pipe fittings must be heat treated, which makes them corrosion-resistant and thus strongly preferred in factories and other applications where pipes and fittings are exposed to the elements, whereas the EN/DIN standard does not require that heat treatment.

64 Seventhly, the applicant claims that the lack of interchangeability and double certification according to the two standards can be explained, moreover, by the fact that, while external dimensions can be similar or identical, the wall of ASME/ANSI-standard tube and pipe fittings is thicker, with the result that ASME/ANSI-standard fittings would be preferred for higher pressure applications, such as those encountered in many industries in Europe.

65 In that regard, it is settled case-law that the determination of the existence of harm caused to the Union industry requires an appraisal of complex economic situations, with the result that the institutions enjoy a broad margin of discretion and the judicial review of such an appraisal must therefore be limited to verifying whether relevant procedural rules have been complied with, whether the facts relied on have been accurately stated, and whether there has been a manifest error in the appraisal of those facts or a misuse of powers (see judgment of 19 December 2013, *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council*, C-10/12 P, not published, EU:C:2013:865, paragraph 22 and the case-law cited).

66 It must be borne in mind that the burden of proving the Commission's manifest error of assessment in finding that tube and pipe fittings produced in accordance with the two standards are similar and that they are in competition is on the applicant (see, to that effect and by analogy, judgments of 9 September 2010, *Carpent Languages* v *Commission*, T-582/08, not published, EU:T:2010:379, paragraph 57, and of 17 January 2017, *Cofely Solelec and Others* v *Parliament*, T-419/15, not published, EU:T:2017:8, paragraph 96).

67 It is therefore necessary, in the present case, to determine whether the applicant submitted evidence capable of demonstrating the manifest error on which it relies.

68 In the first place, it must be stated that the applicant has in no way substantiated its argument that Union producers produce almost exclusively EN/DIN-standard tube and pipe fittings and Chinese producers produce almost exclusively ASME/ANSI-standard tube and pipe fittings. In any event, it must be pointed out that the applicant, by using the term 'almost exclusively' does not exclude the possibility that, to a certain extent, Chinese producers and the Union industry produce tube and pipe fittings in accordance with the two standards.

69 In the second place, it must be stated that, in support of its view that tube and pipe fittings produced in accordance with the two standards are not interchangeable, the applicant submitted to the Court comments that were submitted by two European importers to the Commission. Those comments are set out in emails sent to the Commission by two producers established in the European Union. In those emails, the producers explain the differences between tube and pipe fittings produced in accordance with each of the two types of standards at issue and state that tube and pipe fittings produced in accordance with the EN/DIN standards are not interchangeable or in competition with those produced in accordance with the ASME/ANSI standards. The applicant has not provided any other evidence in support of the statements set out in those emails.

70 It must be held that those emails do not prove that Union producers and Chinese producers produce almost exclusively in accordance with the EN/DIN standard and the ASME/ANSI standard respectively. Nor do they show that fittings produced in accordance with those two standards are not in competition or that there is no double certification under those standards. Mere assertions that are not substantiated by evidence cannot be considered capable of demonstrating that the Commission made the manifest error alleged by the applicant.

71 Thus, in any event, the first complaint must be rejected as unfounded.

72 Under its third complaint, first, the applicant takes issue with recital 54 of the contested regulation, according to which 'the investigation and a hearing with the Union producer that also has an outward processing arrangement have shown that the physical, technical and chemical characteristics of

products approved under the EN/DIN and under the ASME/ANSI standards are comparable'. It considers that the statements by the Union producer to which that recital refers did not address the interchangeability of the two standards and that the producer in question ceased cooperating as of 27 January 2017, meaning that the information it provided was not verified. Nevertheless, the applicant states that the information given by the EU producer which claimed that there was no interchangeability was checked through on-the-spot verification.

73 Secondly, the applicant takes issue with recital 57 of the contested regulation, according to which, 'despite specific requests made to the cooperating importer, the Commission did not receive any evidence demonstrating that the like product and the product concerned [were] not in competition' It claims that the only cooperating importer submitted evidence and written observations to prove that there was no competition. The applicant submits that it is apparent from recital 39 of the contested regulation, according to which, following the revised final disclosure on 25 November 2016, 'subsequent submissions were received from two Chinese exporting producers, the CCCMC, the complainant and three Union importers', that the importer cooperated and submitted further evidence on interchangeability.

74 In that regard, it must be stated that the applicant's criticisms do not support a finding that the Commission lacked impartiality in its assessment of the evidence. Indeed, the hearing with the Union producer referred to in recital 54 of the contested regulation addressed interchangeability. Moreover, it must be pointed out that the Commission did not state that it did not receive any comments and evidence to substantiate the lack of interchangeability, but that it confined itself to finding that the comments and evidence which it received in that regard were not capable of demonstrating the alleged lack of similarity between the two standards.

75 The third complaint must therefore be rejected as unfounded.

76 Under its fourth complaint, the applicant claims that the statement in recital 57 of the contested regulation that the importer failed to provide evidence that there was no competition amounts to imposing an unreasonable burden of proof on the parties.

77 In that regard, it must be pointed out that, as the Commission has contended, recital 57 of the contested regulation does not refer either to the CCCMC or to the applicant, but to an 'EU importer that cooperated with the investigation'. The Court cannot therefore conclude that a reference made by the Commission to the activity of a third party when obtaining evidence amounts to imposing any burden of proof whatsoever on the applicant.

78 The fourth complaint must therefore be rejected as unfounded.

(d) Fifth complaint, alleging failure to provide an adequate statement of reasons in determining that tube and pipe fittings produced in accordance with the ASME/ANSI and EN/DIN standards are interchangeable

79 In the heading of its first plea, the applicant referred to the Commission's alleged failure to provide an adequate statement of reasons in determining interchangeability.

80 In that regard, it is sufficient to note that recitals 52 to 60, 73 and 74 of the contested regulation, which set out the reasons why the Commission considered that the tube and pipe fittings produced in accordance with the ASME/ANSI and EN/DIN standards were comparable, enabled the applicant to dispute in detail the statement of reasons provided by the Commission.

81 The first plea must therefore be rejected as in part unfounded and in part inadmissible.

2. Fifth plea, alleging a manifest error of assessment in applying non-market economy treatment

82 As a preliminary point, as recalled in paragraph 2 above, reference must be made, for the substantive rules, to Regulation No 1225/2009. The applicant must consequently be regarded as relying in particular on recital 3 and Article 2(1) to (7) of Regulation No 1225/2009, the provisions of which are similar in content to those of recital 3 and Article 2(1) to (7) of Regulation 2016/1036, on the date of adoption of the contested regulation.

83 It is apparent from recital 99 of the contested regulation that, 'according to Article 2(7)(a) of [Regulation No 1225/2009], the normal value for the exporting producers not granted [market economy treatment] has to be established on the basis of the prices or constructed value in a third market country' and that 'none of the cooperating exporting producers claimed [market economy treatment]'. In those circumstances, the Commission calculated the normal value for tube and pipe fittings originating in China in accordance with Article 2(7)(a) of Regulation No 1225/2009 (replaced by Article 2(7)(a) of Regulation 2016/1036).

84 The applicant submits, in its fifth plea, that the Commission made a manifest error by using the method for calculating normal value laid down in Article 2(7)(a) of Regulation No 1225/2009. It claims that Article 2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT) (OJ 1994 L 336, p. 103, 'the Anti-Dumping Agreement'), which is set out in Annex 1 A to the Agreement establishing the World Trade Organisation (WTO) (OJ 1994 L 336, p. 3), authorised the European Union and the other members of the World Trade Organisation (WTO) to derogate from the standard method of calculating normal value. However, it submits that, under point 15(d) of Part I of the Protocol on the Accession of the People's Republic of China to the WTO ('the Protocol on the Accession of China to the WTO'), that derogation expired 15 years after the date of China's accession to the WTO, namely on 11 December 2016. Thus, the applicant claims that the Commission should have calculated the normal value on the basis of the method laid down in Article 2(1) to (6) of Regulation No 1225/2009 (replaced by Article 2(1) to (6) of Regulation 2016/1036).

85 The applicant's arguments under this plea may be divided into four complaints.

86 In its first complaint, the applicant submits that point 15 of Part I of the Protocol on the Accession of China to the WTO may be relied on before the Court for the purposes of challenging the legality of the contested regulation.

87 In its second complaint, the applicant claims that the Commission should have interpreted Regulation No 1225/2009 in a manner consistent with WTO law.

88 In its third complaint, in response to the Commission's argument in the defence that the law to be applied to an anti-dumping investigation is the law in force at the time when the investigation was initiated, the applicant argues that Article 18(3) of the Anti-Dumping Agreement is not applicable in the present case. It states that that agreement entered into force for China at the time of its accession to the WTO and that point 15 of Part I of the Protocol on the Accession of China to the WTO merely provided for a partial temporary derogation from the Anti-Dumping Agreement. The applicant adds that applying non-market economy treatment after 11 December 2016 gives rise to inequality between WTO members that apply a retrospective dumping calculation method, such as the United States, and those that apply a prospective dumping calculation method, such as the European Union. Accordingly, the expiry of the derogation provided for in point 15(d) of Part I of the Protocol on the Accession of China to the WTO should be applicable to all cases concerning a definitive calculation of normal value and dumping after 11 December 2016. To find otherwise would be a breach of the principle laid down in the third sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union, which establishes that if, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty is to be applicable.

89 In its fourth complaint, the applicant submits that the WTO Appellate Body held in its report on the dispute 'European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China', adopted on 15 July 2011 (WT/DS 397/AB/R, paragraph 289), that the derogation authorising WTO members to calculate the normal value of Chinese products under point 15(d) of Part I of the Protocol on the Accession of China to the WTO expired 15 years after the date of China's accession, namely on 11 December 2016. The applicant observes that the Commission has acknowledged on several occasions that the derogation laid down in point 15(d) of Part I of the Protocol on the Accession of China to the WTO expired on 11 December 2016, as can be seen from certain press articles. It also emphasises that the Commission's services repeatedly stated that EU law had to be amended to adapt to the European Union's obligations towards the WTO. The applicant submits that the Commission's working documents also refer to the expiry of the derogation in December 2016. In the reply, the applicant maintains that the Commission has not contested those arguments concerning the Commission's acceptance of the expiry at issue.

(a) Possibility of relying before the Court on point 15 of Part I of the Protocol on the Accession of China to the WTO for the purposes of reviewing the legality of the contested regulation

90 It is necessary, first of all, to respond to the arguments put forward by the applicant under its first complaint that point 15 of Part I of the Protocol on the Accession of China to the WTO may be relied on before the Court for the purposes of challenging the legality of the contested regulation in so far as it applied the method laid down in Article 2(7)(a) of Regulation No 1225/2009.

91 In that regard, first, the applicant submits that, while, in principle, it is settled case-law that the Court may not review the legality of a measure adopted by an EU institution, such as the contested regulation, in the light of the WTO agreements and agreements such as the Anti-Dumping Agreement which are annexed to it (judgment of 23 November 1999, *Portugal* v *Council*, C-149/96, EU:C:1999:574, paragraph 47), the Court may do so where the European Union intended to implement a particular obligation assumed in the context of the WTO.

92 The applicant claims that it is apparent from recital 3 of Regulation 2016/1036 that, by Article 2(1) to (6) of that regulation, the European legislature sought to implement its obligations under the Anti-Dumping Agreement.

93 Secondly, the applicant submits that it is settled case-law that the WTO agreements and, by extension, the Anti-Dumping Agreement, are binding on the European Union (judgment of 12 December 1972, *International Fruit Company and Others*, 21/72 to 24/72, EU:C:1972:115, paragraphs 16 to 18).

94 Thirdly, the applicant claims that the Protocol on the Accession of China to the WTO is legal in nature and can be viewed as integral to the Anti-Dumping Agreement. It observes that the protocol's legal nature was established by the WTO Appellate Body in its report on the dispute 'China — Measures Related to the Exportation of Rare Earth, Tungsten and Molybdenum', adopted on 7 August 2014, (WT/DS 431/AB/R).

95 Fourthly, the applicant claims that, pending the other EU institutions' adoption of the Commission's proposed amendments intended to bring Regulation No 1225/2009 into line with the European Union's WTO commitments, the Commission was legally bound to apply the method under Article 2(1) to (6) of Regulation No 1225/2009 to the applicant. It takes the view that, as an EU institution, the Commission is under an obligation to respect international law in the exercise of its powers and cites, to that effect, the judgment of 24 November 1992, *Poulsen and Diva Navigation* (C-286/90, EU:C:1992:453, paragraph 9). When interpreting and applying the basic anti-dumping regulation, the Commission is required to comply with the rules of customary international law, in particular the fundamental principle that treaties or international agreements are binding upon the parties (the *pacta sunt servanda* principle), as codified in Article 26 of the Vienna Convention on the

Law of Treaties of 23 May 1969 ('the Vienna Convention') (judgment of 16 June 1998, *Racke*, C-162/96, EU:C:1998:293, paragraph 49). It submits that Article 27 of the Vienna Convention also states that a party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform the treaty.

96 Lastly, in response to the Council's statement in intervention, in the first place, the applicant states that the judgment of 16 July 2015, *Commission* v *Rusal Armenal* (C-21/14 P, EU:C:2015:494), relied on by the Council, concerned the case of an Armenian exporter. The applicant states that the Protocol on the Accession of Armenia to the WTO does not lay down any detailed rules or conditions which limit the European Union's capacity, temporally or otherwise, to apply anti-dumping rules derogating from the Anti-Dumping Agreement to Armenian exporters on the basis of the special and unilateral regime of the European Union under Article 2(7) of Regulation No 1225/2009. The applicant submits that the applicant in that case could not rely on a protocol on accession laying down limitations on the application of non-market economy treatment. In the second place, the applicant claims that the judgment of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74), also relied on by the Council, was delivered before the expiry of the derogation set out in point 15(d) of Part I of the Protocol on the Accession of China to the WTO. Therefore, questions of international law raised in the respective proceedings by the referring courts cannot call into question the implications of the intention expressed by the European Union to comply with its obligations under the Protocol on the Accession of China to the WTO.

97 In the first place, it must be stated that, as, moreover, the WTO Appellate Body set out in its report on the dispute 'China — Measures Related to the Exportation of Rare Earth, Tungsten and Molybdenum', adopted on 7 August 2014 (WT/DS 431/AB/R), the Protocol on the Accession of China to the WTO is a part of the single package of agreements concluded with the WTO ('the WTO agreements'), which has not been disputed by the parties.

98 In the second place, it must, however, be recalled that it is clear from case-law that the provisions of an international agreement to which the European Union is a party can be relied on in support of an action for annulment of an act of secondary EU legislation or an exception based on the illegality of such an act only where, first, the nature and the broad logic of that agreement do not preclude it and, secondly, those provisions appear, as regards their content, to be unconditional and sufficiently precise (see judgment of 13 January 2015, *Council and Others* v *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 54 and the case-law cited; judgment of 16 July 2015, *Commission* v *Rusal Armenal*, C-21/14 P, EU:C:2015:494, paragraph 37). It is therefore only when both those conditions are met that such provisions may be relied upon before the EU judicature as a criterion for the purposes of assessing the legality of an EU act.

99 As regards the WTO agreements, it must be recalled that, as the applicant has pointed out, it is settled case-law that, given their nature and purpose, the WTO agreements are not in principle among the rules in the light of which the Court is to review the legality of measures adopted by the EU institutions (judgments of 23 November 1999, *Portugal* v *Council*, C-149/96, EU:C:1999:574, paragraph 47; of 1 March 2005, *Van Parys*, C-377/02, EU:C:2005:121, paragraph 39, and of 18 December 2014, *LVP*, C-306/13, EU:C:2014:2465, paragraph 44).

100 Nonetheless, in two situations the Court has accepted, by way of exception, that it was for the EU judicature, if necessary, to review the legality of an EU measure and of the measures adopted for its application in the light of the WTO agreements (see judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 87 and the case-law cited). The first such situation, noted by the applicant, is where the European Union intended to implement a particular obligation assumed in the context of those agreements (judgment of 7 May 1991,

Nakajima v *Council*, C-69/89, EU:C:1991:186) and the second is where the EU measure in question refers explicitly to specific provisions of those agreements (judgment of 22 June 1989, *Fediol* v *Commission*, 70/87, EU:C:1989:254).

101 As regards the second exception referred to in paragraph 100 above, established by the judgment of 22 June 1989, *Fediol* v *Commission* (70/87, EU:C:1989:254, paragraph 19), it must be recalled that no article of Regulation No 1225/2009 refers to any specific provision of anti-dumping agreements (see, to that effect, judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 89, delivered in respect of Regulation No 1225/2009, Regulation 2016/1036 not containing any differences warranting a different solution).

102 As regards the first exception referred to in paragraph 100 above, established by the judgment of 7 May 1991, *Nakajima* v *Council* (C-69/89, EU:C:1991:186, paragraph 31), it must be noted that, according to the Court, while it is true that recital 3 of Regulation No 1225/2009 states that the language of the WTO Anti-Dumping Agreement should be brought into EU legislation as far as possible, that expression must be understood as meaning that, even if the EU legislature intended to take into account the rules of that agreement when adopting Regulation No 1225/2009, it did not, however, show the intention of transposing each of the rules in that regulation (see, to that effect, judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 90).

103 In the third place, concerning Article 2(7) of Regulation No 1225/2009 specifically, it must be noted that the Court has held that it was the expression of the EU legislature's intention to adopt, in that field, an approach specific to the EU legal order, by laying down a special regime of detailed rules relating to the calculation of normal value for imports from non-market economy countries (see, to that effect, judgment of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 91 and the case-law cited). It follows that that provision of Regulation No 1225/2009 cannot be considered to be a measure intended to ensure the implementation in the EU legal order of a particular obligation assumed in the context of the WTO (judgment of 16 July 2015, *Commission* v *Rusal Armenal*, C-21/14 P, EU:C:2015:494, paragraph 50).

104 Moreover, since the applicant has not demonstrated that the conditions for applying the case-law established in the judgment of 7 May 1991, *Nakajima* v *Council* (C-69/89, EU:C:1991:186, paragraph 31), are satisfied, it cannot rely on the *pacta sunt servanda* principle codified in Article 26 of the Vienna Convention either, given that the international agreement whose performance in good faith it questions does not have direct effect (judgment of 3 February 2005, *Chiquita Brands and Others* v *Commission*, T-19/01, EU:T:2005:31, paragraphs 247 and 248; see, also, judgment of 14 December 2005, *Laboratoire du Bain* v *Council and Commission*, T-151/00, not published, EU:T:2005:450, paragraph 102 and the case-law cited).

105 In the present case, it follows from all the foregoing that the Court cannot review the legality of the contested regulation in the light of the Protocol on the Accession of China to the WTO.

106 That finding cannot be invalidated by the applicant's other arguments.

107 The applicant's argument that the judgment of 16 July 2015, *Commission* v *Rusal Armenal* (C-21/14 P, EU:C:2015:494), concerned a producer established in Armenia whose situation was different from that of the applicant because there is no provision similar to point 15 of Part I of the Protocol on the Accession of China to the WTO in the Protocol on the Accession of Armenia cannot invalidate the conclusion reached in paragraph 105 above. As recalled in paragraph 103 above, the Court has concluded that Article 2(7) of Regulation No 1225/2009 cannot be considered to be a measure intended to ensure the implementation in the EU legal order of a particular obligation assumed in the context of the WTO. That finding is applicable in respect of the Protocol on the Accession of China to the WTO. Likewise, the fact put forward by the applicant that the Court cannot rely on the judgment

of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74) in so far as it was delivered before the expiry of the time limit laid down in point 15(d) of Part I of the Protocol on the Accession of China to the WTO is irrelevant. Even if the obligations assumed by the European Union in the context of the WTO agreements have evolved since the date of delivery of the judgment in question, that cannot have any effect on the intention expressed by the European legislature when it adopted Article 2(7) of Regulation No 1225/2009.

108 The applicant's argument that the European Union formally undertook to observe the specific terms of the Protocol on the Accession of China to the WTO, since that protocol had to be expressly approved by the European Union in the form of a decision, cannot call into question the conclusion reached in paragraph 105 above either. As the Commission contends, it is sufficient to note that the fact that the Commission was involved in the approval of the Protocol on the Accession of China to the WTO cannot be interpreted as the intention of the EU legislature to implement a particular obligation assumed in the context of the WTO rules. Such an interpretation would render meaningless the exception established by the judgment of 7 May 1991, *Nakajima* v *Council* (C-69/89, EU:C:1991:186, paragraph 31).

(b) Interpretation of Article 2(7)(a) of Regulation No 1225/2009 in compliance with WTO law

109 As regards the interpretation of Article 2(7)(a) of Regulation No 1225/2009 in compliance with WTO law, first, the applicant submits that EU law must, as far as possible, be interpreted in a manner consistent with international law, in particular where its provisions seek to give effect to an international agreement concluded by the European Union. Accordingly, the applicant claims that the Commission should have interpreted the expression 'on any other reasonable basis' in Article 2(7)(a) of Regulation No 1225/2009 as giving the Commission discretion to calculate normal value in accordance with the method applicable to market economy countries, thus in accordance with WTO law. It submits that Article 2(7)(a) of Regulation No 1225/2009 sets out a hierarchy of methods for calculating normal value for non-market economy countries and argues that normal value should be determined, first of all, on the basis of the price or constructed value in a market economy third country, then on the basis of the price from such a third country to other countries, including the European Union. However, it considers that, where, upon reflection, the Commission finds that those methods are not possible, the Commission is authorised by Article 2(7)(a) of Regulation No 1225/2009, in the exercise of its considerable discretion, to determine normal value on any other reasonable basis. It claims that, by virtue of that expression, the Commission could have considered that, in view of the European Union's international legal commitments, in particular its obligations towards the WTO, it was impossible to determine normal value on the basis of the analogue country method and that normal value should be calculated on the basis of the applicant's domestic costs and prices. In that regard, the applicant submits that the calculation of normal value on the basis of domestic production costs or its domestic prices was possible in practice.

110 In that regard, in the first place, it should be noted that it is true that, in accordance with settled case-law, EU legislation must, so far as possible, be interpreted in a manner that is consistent with international law, in particular where its provisions are intended specifically to give effect to an international agreement concluded by the European Union (judgments of 14 July 1998, *Bettati*, C-341/95, EU:C:1998:353, paragraph 20, and of 9 January 2003, *Petrotub and Republica* v *Council*, C-76/00 P, EU:C:2003:4, paragraph 57).

111 It must nevertheless be stated that, as noted in paragraph 103 above, Article 2(7)(a) of Regulation No 1225/2009 cannot be considered to be a provision intended to implement specific obligations in the context of the WTO agreements. That provision lays down rules concerning the calculation of normal value that have no equivalents in the WTO agreements, which do not lay down any rules concerning the calculation of normal value for non-market economy countries.

112 In the second place, it must be pointed out that the institutions enjoy discretion when determining normal value in respect of non-market economy countries (judgment of 27 October 2011, *Dongguan Nanzha Leco Stationery* v *Council*, C-511/09 P, EU:C:2011:696, paragraph 33). It is clear from case-law that the method laid down in Article 2(7)(a) of Regulation No 1225/2009, whereby the normal value of the product in question is determined 'on any other reasonable basis' is a secondary method, applicable where undertakings established in analogue countries contacted are not willing to cooperate in the investigation (judgment of 10 September 2015, *Fliesen-Zentrum Deutschland*, C-687/13, EU:C:2015:573, paragraph 56).

113 It follows from the foregoing, first, that the Commission was not required to interpret Article 2(7) of Regulation No 1225/2009 in accordance with the obligations of the European Union in the context of the WTO and, secondly, that the interpretation suggested by the applicant would render meaningless the margin of discretion that the legislature intended to grant to the Commission by means of the expression 'on any other reasonable basis' in Article 2(7)(a) of Regulation No 1225/2009.

114 In the light of the foregoing, it must be concluded that the Commission was not required to interpret Article 2(7) of Regulation No 1225/2009 in the light of point 15 of Part I of the Protocol on the Accession of China to the WTO.

115 It follows from the conclusions reached in paragraphs 105 and 114 above that the Commission did not make a manifest error in applying the method laid down in Article 2(7) of Regulation No 1225/2009 to calculate the normal value in the present case.

116 The applicant's other complaints concerning the temporal application of point 15 of Part I of the Protocol on the Accession of China to the WTO and the consequences of the expiry of point 15 of Part I of that protocol in accordance with WTO law cannot invalidate the conclusion reached in paragraph 114 above.

117 Since WTO law is neither a criterion for reviewing the legality of the contested regulation nor a provision in the light of which the Commission is required to interpret Article 2(7) of Regulation No 1225/2009, the applicant's complaints in that regard must necessarily be rejected as ineffective.

3. Second plea, alleging a manifest error of assessment and failure to provide an adequate statement of reasons in relation to the adjustment of the normal value

118 It is clear from recital 111 of the contested regulation that, 'due to lack of domestic sales of the like product in Taiwan, normal value was constructed in line with Article 2(3) and (6) of [Regulation No 1225/2009]', accordingly 'adding to the average cost of manufacturing of the relevant product type [the selling, general and administrative] costs incurred and profit realised on the Taiwanese market during the investigation period'.

119 Recital 117 of the contested regulation states the following:

'Taking into account that only a limited number of product types exported to the Union by the sampled Chinese exporting producers could be identified in Taiwan, the Commission has constructed the normal value of the remaining product types based on the costs of manufacturing of the most resembling product types produced in Taiwan in order to achieve a full and fair comparison, based on the costs of manufacturing adjusted for:

(a) differences in raw material used — on the basis of verified Union Industry cost data, whereby fittings produced from seamless tubes are between 2.12 and 2.97 times more expensive to produce than those from welded tubes;

(b) differences in grade of steel — on the basis of verified Union industry data, whereby a steel grade cost adjustment is made to the cost of the least expensive steel grades used for fittings produced based on welded tubes as raw material; this adjustment ranges from 1.49 to 3.60 times depending on the steel grades used;

(c) differences in shapes — on the basis of observed price differences in the sales transactions of the Chinese exporters, whereby an elbow is considered the most basic shape and the other shapes (tees, reducers, caps and specialty forms) are between 1.08 and 1.74 times more expensive.'

120 According to recital 118 of the contested regulation:

'The CCCMC proposed in its submission after provisional disclosure an alternative basis for adjustments of points (a) and (b) and presented data from the Chinese markets in this respect. However, [those] data are, firstly, unverified and, secondly, originate in a non-market economy country. Therefore, using them would negate the analogue country methodology for the calculation of the normal value. This claim of the CCCMC was thus rejected.'

121 In its second plea, the applicant claims that the Commission made a manifest error of assessment in relation to the adjustment of the normal value. The applicant also relies on a failure to provide an adequate statement of reasons in relation to the adjustment of the normal value. Those two complaints will be examined in turn below.

(a) Admissibility of some of the applicant's arguments

122 The Commission contends that the applicant's argument that the fact that the Commission used Chinese data to adjust the production costs of tube and pipe fittings on the basis of differences in shape (in recital 117(c) of the contested regulation) calls into question the rejection (in recital 118 of that regulation) of the data from the Chinese markets submitted by the CCCMC to contest the adjustments of production costs made in recital 117(a) and (b) of the contested regulation is inadmissible. According to the Commission, that argument is inadmissible under Article 76(d) of the Rules of Procedure. The Commission states that the applicant has not clarified which part of the contested regulation was disputed by that argument and that the applicant did not therefore enable the Commission to defend itself.

123 In response to a question put by the Court at the hearing, the Commission nevertheless accepted that, by its argument referred to in paragraph 122 above, the applicant submitted, in essence, that the Commission should have used the data from the Chinese market, and left the decision on the admissibility of that argument to the Court's discretion.

124 In that regard, it must be stated that the applicant's argument referred to in paragraph 122 above may indeed be understood in the way suggested by the Commission, with the result that it must be declared admissible.

(b) Substance

(1) Manifest error of assessment in relation to the adjustment of the normal value

125 The applicant contests the Commission's refusal, in recital 118 of the contested regulation, to take into account the price lists for welded and seamless pipes used by Chinese producers submitted by the CCCMC for the purpose of making adjustments to the production costs of certain products produced in Taiwan in order to take account of differences in the raw materials used (recital 117(a)) and differences in the grades of steel (recital 117(b)) in comparison with products exported to the

European Union by Chinese producers. The applicant argues that the fact that the Commission used data relating to the production costs of the Union industry to adjust the production costs of the Taiwanese products had the effect of multiplying the level of the dumping margin attributed to the applicant. In the reply, the applicant indicated that the data submitted by the CCCMC from the Chinese market were not intended to establish the prices to be used for determining the normal value in Taiwan, but to give an indication to the Commission of the relative difference between the costs of welded and seamless pipes as raw materials and to demonstrate that the difference alleged by the Union producers was excessive. The applicant claims that the data submitted by the CCCMC concerned prices of the raw materials used in the production of tube and pipe fittings, namely tubes and pipes supplied to Chinese producers of tube and pipe fittings as production material. It states that Union producers and the majority of Chinese producers do not themselves produce the guide tube for the production of their tube and pipe fittings, and must therefore purchase those raw materials as production materials. Accordingly, the data submitted by the CCCMC is directly relevant to calculating the production costs of producers of tube and pipe fittings, in markets in the European Union and in China. The applicant observes that the data submitted by the CCCMC indicated that the cost of seamless pipes was 1.3 times the cost of welded pipes, whereas the Commission ultimately determined that the cost of seamless pipes was between 2.12 and 2.97 times higher than the cost of welded pipes.

126 It must be recalled that, as is apparent from paragraph 112 above, the institutions of the European Union enjoy broad discretion when determining normal value in respect of non-market economy countries (judgment of 27 October 2011, *Dongguan Nanzha Leco Stationery* v *Council*, C-511/09 P, EU:C:2011:696, paragraph 33).

127 Furthermore, it follows from case-law that the burden of proving a manifest error lies with the applicant, which must provide conclusive evidence in support of its claim (see, to that effect, judgment of 22 October 1991, *Nölle*, C-16/90, EU:C:1991:402, paragraph 17; see also, to that effect and by analogy, judgments of 9 September 2010, *Carpent Languages* v *Commission*, T-582/08, not published, EU:T:2010:379, paragraph 57, and of 17 January 2017, *Cofely Solelec and Others* v *Parliament*, T-419/15, not published, EU:T:2017:8, paragraph 96).

128 In the present case, it must therefore be ascertained whether the applicant provided evidence to show that the Commission made a manifest error of assessment in calculating the normal value.

129 First, the applicant disputes the Commission's statement, in recitals 118 and 123 of the contested regulation, that the data submitted by the CCCMC was not verified. The applicant states that those data, consisting of tables containing prices charged by Chinese companies for various welded and seamless pipes, were drawn from official producer price lists, the authenticity of which could be checked. The applicant submits that the Commission decided not to check those data, with the result that it cannot reject them by relying on the fact that they were not verified. The applicant adds that the CCCMC submitted evidence in its comments on the final disclosure including verified invoices of the applicant and another cooperating producer.

130 As regards the second ground for rejecting the data submitted by the CCCMC given in recital 118 of the contested regulation, namely the fact that the data came from a non-market economy country, the applicant considers that that criterion cannot justify automatic rejection. The applicant claims that, in the dispute 'European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China', adopted on 15 July 2011 (WT/DS 397/AB/R, paragraph 289), the WTO Appellate Body held that the Commission cannot reject Chinese evidence submitted for the purpose of making normal value adjustments by simply relying on China's non-market economy status. The applicant adds that, although the WTO Appellate Body's report on the dispute 'European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China', adopted on 15 July 2011 (WT/DS 397/AB/R, paragraph 289) concerned the fair comparison between the normal value and the export price within the meaning of Article 2(10) of Regulation

No 1225/2009 (replaced by Article 2(10) of Regulation 2016/1036), not adjustments to the normal value, that case is applicable in the present case, since the only reason why the Commission did not take the data submitted by the CCCMC into account is the fact that the data originated in an economy that is not a market economy. The applicant also claims that, in the case that gave rise to the judgment of 1 June 2017, *Changmao Biochemical Engineering* v *Council* (T-442/12, EU:T:2017:372), the Commission used Chinese prices to calculate the normal value of one of the products concerned which was not produced in the analogue country, which is the case in the present proceedings.

131 Secondly, as regards recital 124 of the contested regulation, the applicant takes issue with the Commission for rejecting the data submitted by the CCCMC on the basis of the fact that those data related to prices and not to production costs. The applicant claims that the Commission did not explain the difference between the producer purchase cost and the supplier sale price.

132 Thirdly, the applicant submits that the Commission itself used Chinese data for the adjustment of the normal value concerning differences in shape, on the basis of observed price differences in the sales transactions of the Chinese exporters, in recital 117(c) of the contested regulation. It claims that, if data relating to sale prices in a non-market economy country are reliable for adjustments to the normal value relating to different shapes of tube and pipe fittings, they should be reliable enough for calculating the differences relating to raw materials and relevant grades of steel in recital 117(a) and (b) of the contested regulation.

133 Fourthly, the applicant takes issue with the Commission for considering, in paragraph 124 of the revised final disclosure, that the Chinese producers had not submitted any cost of production data. The applicant submits that the time limit of 22 days set for submitting comments on the final disclosure was not sufficient for the submission of additional data to the data submitted beforehand by the CCCMC, since it had discovered for the first time on the date of that disclosure that the data submitted had been rejected by the Commission.

134 In that regard, it must be recalled that, as was found in the analysis of the applicant's fifth plea, the Commission was fully entitled to apply the method applicable to non-market economy countries in the present case. Under that method, in which the Commission enjoys broad discretion, the Commission is not required to take into consideration data from non-market economy countries, but must use as a basis 'the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product'.

135 In addition, it should be noted that Article 2(7) of Regulation No 1225/2009 also authorises the Commission to use data from the Union industry, in that it establishes that the Commission may use the 'the price actually paid or payable in the Union for the like product' as a basis.

136 Furthermore, it must be stated that it is clear from recital 118 of the contested regulation that the fact that the data submitted by the CCCMC originated in a non-market economy country was not the only ground on which those data were rejected. That rejection was also based, as stated in recital 124 of the contested regulation, on the fact that the data submitted by the CCCMC consisted of sales prices for pipes, which could not be considered suitable for the purposes of calculating the production costs of tube and pipe fittings.

137 Lastly, it must be recalled that the applicant has not submitted any application intended to demonstrate that it operated under market economy conditions pursuant to Article 2(7)(b) of Regulation No 1225/2009.

138 The factors recalled above are sufficient for it to be concluded that the Commission did not make a manifest error of assessment in rejecting the data from the Chinese market submitted by the CCCMC in order to make the adjustments to the production costs explained in recital 117(a) and (b) of the contested regulation.

(2) Failure to provide an adequate statement of reasons in relation to the adjustment of the normal value

139 The applicant claims that no statement of reasons has been provided in relation to the adjustments to the contested production costs.

140 In that regard, it must be recalled that, provided that a regulation imposing definitive anti-dumping duties falls within the general scheme of a series of measures, it cannot be required that its statement of reasons specify the often very numerous and complex matters of fact and law dealt with in the regulation or that the institutions adopt a position on all the arguments relied on by the parties concerned. On the contrary, it is sufficient for the institution that adopted the measure to set out the facts and the legal considerations having decisive importance in the scheme of the contested regulation. The institutions are not required to give specific reasons for a decision not to take account of the various arguments raised by the interested parties. It is sufficient that the regulation contain clear justification for the main points of their analysis, provided that that justification is capable of casting light on the reasons why they rejected the relevant arguments raised by the parties during the administrative procedure. Moreover, a regulation imposing anti-dumping duties following an investigation procedure has to be reasoned only as regards all the elements of fact and of law that are relevant for the purposes of the findings made in it. The statement of reasons for such a measure does not seek to explain the development of the position of the institutions during the administrative procedure and is thus not aimed at justifying the differences between the solution adopted in the final measure and the provisional position set out in the documents sent to the interested parties during that procedure to enable them to submit their observations. That obligation thus also does not require the institutions to explain why a position which they envisaged at a certain stage of the administrative procedure turned out to be unfounded (judgment of 13 September 2010, *Whirlpool Europe* v *Council*, T-314/06, EU:T:2010:390, paragraphs 114 to 116).

141 In the present case, it is sufficient to note that it is clear from recitals 118 to 129 of the contested regulation that the Commission clearly and unequivocally set out the statement of reasons for rejecting the data submitted by the CCCMC.

142 It must be concluded that the Commission did not fail to fulfil its obligation to state reasons in relation to the adjustment of the normal value.

143 In the light of the foregoing, the second plea must be rejected.

4. Third plea, alleging a manifest error of assessment and abuse of discretion in determining the period considered

144 As a preliminary point, it must be pointed out that, on 10 November 2012, following a complaint filed by the Defence Committee of the Stainless Steel Butt-welding Fittings Industry of the European Union, the Commission initiated a separate anti-dumping investigation to that at issue in the present case ('the prior investigation'). That investigation was initiated by notice of initiation of an anti-dumping proceeding concerning imports of stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan (OJ 2012 C 342, p. 2). That investigation was closed, following the withdrawal of the complaint, by Commission Decision

2013/440/EU of 20 August 2013 terminating the anti-dumping proceeding concerning imports of stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan (OJ 2013 L 223, p. 13).

145 It should be recalled that it is clear from recital 43 of the contested regulation that the investigation at issue in the present case 'related to the period from 1 October 2014 to 30 September 2015'. It is clear from recital 44 of the contested regulation that 'the examination of trends relevant for the assessment of injury covered the period from 1 January 2012 to the end of the investigation period'.

146 In its third plea, the applicant submits that the Commission should have examined the trends relevant for the assessment of injury over a period commencing in 2010, rather than 2012.

147 First, the applicant acknowledges that the Commission's usual practice in anti-dumping investigations is to examine a period of 4 years. However, it emphasises that, during the investigation at issue in the present case, the CCCMC gave the Commission reason to consider an extension of the period concerned such that it would overlap with the period of the prior investigation. It claims in that regard that the Commission's wide discretion in anti-dumping matters also includes being able to depart from the normal practice when the circumstances of the investigation in question so warrant. It maintains that the circumstances of the investigation at issue warranted the Commission departing from its usual practice, since the Commission had already carried out a significant proportion of the prior investigation with largely the same complainant, the same product concerned and the same exporting producers and importers, and certainly already had in its possession all of the Eurostat data compiled and analysed during the prior investigation. The applicant claims that, even though the prior investigation was closed by Decision 2013/440 following the withdrawal of the complaint, the real reason why the Commission closed that investigation was that there was insufficient evidence of injury to the Union industry. The applicant concludes that the rejection of the CCCMC's request to extend the period considered constitutes an 'abuse of [the Commission's] wide discretion' and claims that the Court should find that the Commission's conclusions on the period considered and, by necessary implication, its final injury determination are inadequately reasoned and unlawful.

148 Secondly, the applicant claims that the CCCMC submitted, in the course of the investigation at issue, data containing evidence (based on updated Eurostat data) that related to pricing and volume of trade from the two countries targeted by the investigation at issue in the present case and covered a period commencing in 2010. Those data show the overall stability of price trends and volumes of imports over the period commencing in 2010. The applicant states that that evidence was submitted to show that prices and volumes of imports had suffered no appreciable reduction in comparison with the period covered by the prior investigation. However, it accepts that, if trade trends were examined only since 2012, import prices seem to have declined. If, however, the longer period is assessed, the applicant submits that it is clear that import prices over the whole period remained quite stable, which ought, in its view, to be a major factor when assessing current injury and the causal link.

(a) Admissibility of the plea

149 The Commission contends that the applicant's third plea is inadmissible under Article 76(d) of the Rules of Procedure. The applicant has not set out in a coherent and comprehensible manner, in the text of the application, the essential elements of fact and law on which the action is based in order to enable the defendant to defend itself and the Court to rule on the action, if necessary, without any further information. The Commission observes that the application must specify the nature of the grounds on which the action is based, and that a mere abstract statement of the grounds does not satisfy the requirements of the Rules of Procedure (judgment of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-443/11, EU:T:2014:774, paragraph 66). It notes that, where a plea or part of a plea is incomprehensible, it must be declared inadmissible (judgment of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-443/11, EU:T:2014:774,

paragraph 135). The Commission contends that the applicant has not explained what constitutes the manifest error of assessment or abuse of discretion relied on in the heading of the third plea. The Commission emphasises that the applicant provides no evidence in support of the claims made under the third plea, except for its assertion that it is clear that the import prices since 2010 remained quite stable, referring to an annex.

150 Alternatively, the Commission contends that the applicant's argument in paragraph 80 of the application concerning the stability of export prices since 2010 is inadmissible under Article 76(d) of the Rules of Procedure. The Commission states that, in order to substantiate its assertion that the import prices since 2010 remained quite stable, the applicant refers generally to an annex, namely a 28-page document, but does not specify in any way where to find the arguments supporting its assertion. In that regard, it recalls the Court's case-law to the effect that it is not for the General Court to seek and identify in the annexes and written pleadings the pleas on which it may consider the action to be based (judgments of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraphs 97 and 100, and of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraph 41). Similar requirements are called for where a submission is made in support of a plea in law raised before the General Court (judgment of 13 June 2013, *Versalis* v *Commission*, C-511/11 P, EU:C:2013:386, paragraph 115). The Commission submits that a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential arguments in law which must appear in the application (see, to that effect, judgments of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraphs 94 to 100; of 13 June 2013, *Versalis* v *Commission*, C-511/11 P, EU:C:2013:386, paragraph 115, and of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraph 40).

151 In the present case, in the first place, it must be stated that, as is apparent from paragraphs 147 and 148 above, the applicant set out in the application the arguments on which its third plea was based in a sufficiently clear manner, with the result that that plea cannot be declared inadmissible for that reason.

152 In the second place, it must be noted that, in paragraph 80 of the application, the applicant in fact refers generally to Annex A.11, which, moreover, it confirms in the reply. The fact that it indicates at the reply stage the specific information in that annex which, in its view, supports its claims cannot compensate for the failure, arising during the initiation of the action, to comply with the requirements of Article 76 of the Rules of Procedure (see order of 9 January 2015, *Internationaler Hilfsfonds* v *Commission*, T-482/12, not published, EU:T:2015:19, paragraph 39 and the case-law cited). Accordingly, it must be held that the applicant's general reference to Annex A.11 is inadmissible (see, to that effect, judgments of 22 June 2017, *Biogena Naturprodukte* v *EUIPO (ZUM wohl)*, T-236/16, EU:T:2017:416, paragraph 12, and of 9 March 2018, *NORMOSANG*, T-103/17, not published, EU:T:2018:126, paragraph 25).

(b) Substance

153 In the first place, the applicant's argument that, even though the prior investigation was closed by Decision 2013/440 following the withdrawal of the complaint, the real reason why the Commission closed that investigation was that there was insufficient evidence of injury to the Union industry must be declared ineffective. It must be pointed out that, as the Commission contends, it is not for the Court to analyse, in the present action, arguments relating to the prior investigation, since the questions relating to the determination or non-determination of injury in that investigation are independent of the investigation at issue in the present case and are not such as to entail the annulment of the contested regulation.

154 In the second place, as regards the manifest error on which the applicant relies, it must be borne in mind that it is for the applicant to provide conclusive evidence in support of its claim (see, to that effect, judgment of 22 October 1991, *Nölle*, C-16/90, EU:C:1991:402, paragraph 17; see also, to that effect and by analogy, judgments of 9 September 2010, *Carpent Languages* v *Commission*, T-582/08, not published, EU:T:2010:379, paragraph 57, and of 17 January 2017, *Cofely Solelec and Others* v *Parliament*, T-419/15, not published, EU:T:2017:8, paragraph 96).

155 According to the case-law, the investigation must be carried out on the basis of as recent information as possible in order to be able to determine the anti-dumping duties appropriate for protecting the EU industry against dumping (judgments of 3 October 2000, *Industrie des poudres sphériques* v *Council*, C-458/98 P, EU:C:2000:531, paragraph 92; of 28 January 2016, *CM Eurologistik and GLS*, C-283/14 and C-284/14, EU:C:2016:57, paragraph 66, and of 25 January 2017, *Rusal Armenal* v *Council*, T-512/09 RENV, EU:T:2017:26, paragraph 119).

156 In the present case, the applicant has not provided any evidence to warrant the Commission departing from its usual practice of taking a period of 4 years as the period considered and taking into account trade data from 2010 onwards.

157 It must therefore be concluded that the applicant has not shown that the Commission made a manifest error of assessment.

158 In the third place, as regards the abuse of discretion relied on by the applicant, it must be borne in mind that a measure is vitiated by a misuse of powers only if it appears on the basis of objective, relevant and consistent evidence to have been taken with the exclusive or main purpose of achieving an end other than that stated or of evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see judgment of 14 October 2009, *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 50 and the case-law cited).

159 In the present case, the applicant has provided no evidence to show that, in adopting the contested regulation, the Commission pursued an aim other than that of adopting anti-dumping measures under EU law. Therefore, the argument as to an alleged abuse of discretion on the part of the Commission must be rejected.

160 In the fourth place, as regards the applicant's argument that the Commission's findings in relation to the period considered should be deemed inadequately reasoned, it is appropriate to refer to the case-law cited in paragraph 140 above.

161 In the present case, it is sufficient to note that, in recital 46 of the contested regulation, the Commission set out the reasons for rejecting the request to extend the period considered that was made by certain parties during the anti-dumping investigation.

162 The applicant's argument that the findings should be deemed inadequately reasoned must therefore be declared unfounded.

163 It follows from the foregoing that the third plea must be rejected on its merits, and it is not necessary to rule on whether it is effective, which is also disputed by the Commission.

5. Fourth plea, alleging breach of the principles of sound administration and transparency and infringement of the rights of defence

164 By its fourth plea, the applicant claims that the Commission failed to observe general principles of EU law, such as the principle of sound administration, the principle of transparency and the rights of defence. The applicant submits that the Commission did not respect its rights of defence, first, by

refusing to disclose data on the Union industry that was available at the time of the provisional disclosure, secondly, by setting a time limit of 22 days for submitting comments on the final disclosure and, thirdly, by setting a time limit of two and a half working days to submit comments on the revised final disclosure of 25 November 2016, which contained important information released for the first time.

(a) Breach of the principles of sound administration and transparency relied on by the applicant

165 The Commission contends that the applicant's argument that the Commission failed to observe general principles of EU law, such as the principle of sound administration and the principle of transparency, must be declared inadmissible in so far as the applicant has not set out in the application what constitutes the breach of those principles. The Commission states that it is clear from Article 21(1) of the Statute of the Court of Justice of the European Union that actions must indicate the subject matter of the proceedings and the applicant's pleas in law. It notes that the Court has held that, in order for an action to be admissible, the applicant has to set out in a coherent and comprehensible manner, in the text of the application, the essential elements of fact and law on which the action was based in order to enable the defendant to defend itself and the Court to rule on the action, if necessary, without any further information. The application must accordingly specify the nature of the grounds on which the action is based, and a mere abstract statement of the grounds does not satisfy the requirements of the Rules of Procedure. According to the Commission, where a plea or part of a plea is incomprehensible, it must be rejected (see, to that effect, judgments of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-443/11, EU:T:2014:774, paragraphs 66 and 135, and of 24 September 2015, *Italy and Spain* v *Commission*, T-124/13 and T-191/13, EU:T:2015:690, paragraph 33).

166 Under Article 76(d) of the Rules of Procedure, the application must contain a summary of the pleas in law on which it is based. It is clear from case-law that that summary must be sufficiently clear and precise to enable the defendant to prepare its defence and the court having jurisdiction to rule on the action (see, to that effect, judgment of 5 March 1991, *Grifoni* v *EAEC*, C-330/88, EU:C:1991:95, paragraph 18).

167 In the present case, it should be noted that, as the Commission has argued, the applicant has not developed or explained what constitutes the breach of the principles of sound administration and transparency on which it relied in the heading of the fourth plea, with the result that that line of argument must be rejected as inadmissible.

(b) Infringement of the applicant's rights of defence

168 As regards the infringement of the rights of defence relied on by the applicant, it must first be noted that, as concluded in paragraph 36 above, the applicant cannot rely on the CCCMC's rights of defence before the Court.

169 Next, the complaint that the time limit granted for submitting comments on the revised final disclosure was insufficient must be rejected, for the reasons set out in paragraphs 37 to 41 above.

170 Furthermore, as regards, the complaint that data on the Union industry available at the time of the provisional disclosure were not disclosed, it must be noted, first, that the applicant has not established that it requested the disclosure of those data itself in its comments on the provisional disclosure, the reference to the CCCMC's comments being irrelevant for the reasons recalled in paragraph 169 above. Secondly, the applicant failed to establish that the outcome of the procedure might have been different had it been aware of those data as from the time of the provisional disclosure rather than the time of the final disclosure. For the foregoing reasons, the present complaint must be rejected.

171 As regards, lastly, the complaint that the time limit granted for submitting comments on the final disclosure was insufficient, it is sufficient to note that the time limit of 22 days granted by the Commission is well above the minimum time limit of 10 days prescribed, in that context, by Article 20(5) of Regulation 2016/1036, and the specific circumstances claimed by the applicant cannot call into question the proper conduct of the procedure in that regard. Accordingly, the present complaint must be rejected.

172 In the light of the foregoing, the fourth plea must be rejected in its entirety.

173 It follows from the foregoing that the action must be dismissed.

IV. Costs

174 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

175 Under Article 138(1) of the Rules of Procedure, Member States and institutions which have intervened in the proceedings are to bear their own costs.

176 In the present case, the Commission applied for the applicant to be ordered to pay the costs. Since the applicant has been unsuccessful, the form of order sought by the Commission must be granted and the applicant ordered to pay the costs. In addition, as an intervening institution, the Council must bear its own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Zhejiang Jndia Pipeline Industry Co. Ltd to pay, in addition to its own costs, those incurred by the European Commission;**

3. **Orders the Council of the European Union to bear its own costs.**

Kanninen Calvo-Sotelo Ibáñez-Martín Reine

Delivered in open court in Luxembourg on 19 September 2019.

E. Coulon
Registrar

A. M. Collins
President

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